2005

SUPREME COURT OF THE UNITED STATES.

No. 187.

THE SALMON FALLS MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM W. GODDARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MASSACHUSETTS.

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Gideon, Printer.

UNITED STATES, *ss.*

The President of the United States, to the judges of the circuit court, holden in and for the district of Massachusetts, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between the Salmon Falls Manufacturing Company, a corporation established by the laws of New Hampshire, plaintiffs, and William W. Goddard, of Boston, county of Suffolk, a citizen of the Commonwealth of Massachusetts, merchant, defendant, in a plea of the case, a manifest error has intervened to the great damage of the said Salmon Falls Manufacturing Company, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

ISAAC O. BARNES, *Clerk.*

Allowed by

B. R. CURTIS,
Associate justice, Supreme Court, U. S.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit, within and for the district of Massachusetts, herewith, in pursuance of the command contained in the within writ of error, return and annex herewith a transcript from the record of the judgment and bill of exceptions in the case of "the Salmon Falls Manufacturing Company" against William W. Goddard, which judgment and bill of exceptions contain and constitute the entire record and proceedings in this court, had in the case referred to, in the within writ of error. I also annex the citation, served by acknowledgment of the defendant, showing the issuing of said writ of error, a copy of which

writ has been filed in the clerk's office by the counsel of the plaintiffs in error.

In witness whereof I have hereto set my hand and the seal of said circuit court, this twenty-ninth day of November, 1851.

ISAAC O. BARNES, *Clerk.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

To William W. Goddard, of Boston, county of Suffolk, commonwealth of Massachusetts, and a citizen of said State, merchant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the first circuit and district of Massachusetts, wherein the Salmon Falls Manufacturing Company, a corporation established by the laws of New Hampshire, are plaintiffs, and you are defendant in error; to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Benjamin R. Curtis, one of the justices of the Supreme Court of the United States, this twenty-fifth day of November, in the year of our Lord 1851.

B. R. CURTIS,
Associate justice S. C., U. S.

I, William W. Goddard, the within named defendant in error, by Francis O. Watts, esquire, my attorney and counsel, admit that due and sufficient service of this citation has been made upon me.

November 26th, 1851.

WILLIAM W. GODDARD,
By FRANCIS O. WATTS,
Attorney.

UNITED STATES OF AMERICA,
Massachusetts district.

October term, 1851.

At a circuit court of the United States, begun and holden at Boston, for the first circuit and district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-one—

Before the honorable Benj. R. Curtis, associate justice, [and] honorable Peleg Sprague, district judge.

The SALMON FALLS MANUFACTURING COMPANY, a corporation established by the laws of New Hampshire, plaintiffs,
vs.
WILLIAM W. GODDARD, of Boston, in the district of Massachusetts, merchant, and a citizen of the Commonwealth of Massachusetts, defendant.

In a plea of the case, for that the said defendant, on the day of the purchase of this writ, being indebted to the plaintiffs in twenty thousand dollars, for goods sold and delivered by the plaintiffs to the defendant; and in the same amount for work done, and materials for the same provided, by the plaintiffs for the defendant, at his request; and in the same amount for money lent by the plaintiffs to the defendant; and in the same amount for money received by the defendant to the use of the plaintiffs; and in the same amount for money paid by the plaintiffs for the use of the defendant, at his request; and in the same amount for money due from the defendant to the plaintiffs, for interest of money before then due and owing from the defendant to the plaintiffs, and by the plaintiffs forborne to the defendant at the defendant's request, for a long time before then elapsed; and in the further sum of dollars and cents, according to the account annexed; in consideration thereof promised to pay the same amount to the plaintiffs on demand, yet he has not paid the same.

Also in a plea of the case, that said defendant, on the day of the date of this writ, being indebted to the plaintiffs in the sum of twenty thousand dollars, for divers goods, wares, and merchandise, by the said plaintiffs before that time bargained and sold to the said defendant, at his special instance and request; and being so indebted he, the said defendant, in consideration thereof, afterwards, on the same day, undertook, and then and there promised said plaintiffs to pay them the said last mentioned sum of money on request; yet, though often requested, the said defendant has not paid the same, or any part thereof, but neglects and refuses so to do.

Also in a plea of the case, for that whereas, on the nineteenth day of September, eighteen hundred and fifty, at Boston aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, would bargain and sell to him, the said defendant, a certain quantity of goods, to wit, three hundred bales of Salmon Falls drills, at seven cents and one-quarter of one cent per yard, amounting to twelve thousand nine hundred and sixty-eight dollars, and one hundred cases of blue drills, at eight cents and three-quarters of one cent per yard, amounting to five thousand five hundred and ninety-seven dollars and three cents, the whole amounting to the sum of eighteen thousand five hundred and sixty-five dollars and three cents; he, the said defendant, undertook, in writing, and then and there faithfully promised the plaintiffs, to buy said goods at the price and sum aforesaid; and it was at the same time understood and agreed, by and between

the plaintiffs and said defendant, that he, the said defendant, should pay therefor by making and delivering to said plaintiffs the promissory note of said defendant for the sum aforesaid, payable in twelve months from the day when a certain ship called the "Crusader" should sail from Boston aforesaid, upon an then intended voyage to some foreign port, and that said ship should, at all events, sail before the then next first day of December since passed, whenever requested to give such note; which said ship in fact sailed from Boston, on such her intended voyage, on the sixth day of November, eighteen hundred and fifty; and the said plaintiffs in fact say that they, confiding in the said promise and undertaking of the said defendant, did afterwards, on the nineteenth day of September aforesaid, bargain and sell the said goods and merchandise to him, the said Goddard, at the prices, and upon the terms aforesaid; and thereafter the sailing of said ship, to wit, on the sixth day of November, eighteen hundred and fifty, the plaintiffs demanded payment of the price of said goods, of and by said Goddard, by his making and delivery of the note of said Goddard according to the terms of said bargain and sale; yet the said defendant, not regarding his said promise and undertaking, but contriving, and wrongfully and unjustly intending, to deceive and defraud the plaintiffs in that behalf, did not, nor would when so requested, or at any time before or afterwards, pay the said plaintiffs the said price of said goods, or any part thereof, by giving his said note as aforesaid, or otherwise, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do; and by reason thereof they, the said plaintiffs, have lost and been deprived of the use and benefit of the said note, which he, the said defendant, ought to have given as aforesaid, to the damage of the said plaintiffs, as they say, the sum of thirty thousand dollars.

This action was entered at the May term, A. D. 1851, of this court, at which term the plaintiffs, by leave of court, amended their declaration, by adding the following counts, to wit:

Also in a plea of the case, for that whereas, on the nineteenth of September, eighteen hundred and fifty, in consideration that the plaintiffs, acting by and through their agent, Robert M. Mason, at the request of the defendant, would bargain and sell to the defendant three hundred bales S. F. drills, at seven and one-fourth cents per yard, and one hundred cases blue drills, at eight and three-fourth cents per yard, the defendant, by an instrument in writing by him signed with his initials, W. W. G., undertook, and promised the plaintiffs to buy said goods at the prices aforesaid, the said three hundred bales amounting to the sum of twelve thousand nine hundred and sixty-eight dollars, [and] the said one hundred cases, to the sum of five thousand five hundred and ninety-seven dollars and three cents; and at the same time it was understood and agreed, that the defendant should pay therefor, by making and delivering to the said plaintiffs the promissory note of said defendant for the several sums aforesaid, amounting to eighteen thousand five hundred and sixty-five dollars and three cents, payable to the treasurer of the plaintiffs in twelve months from the day when a cer-

tain ship called the "Crusader" should sail from Boston aforesaid, upon the said defendant stipulating that said ship should sail before the first of December then next ensuing; the plaintiffs, confiding in the promises and undertakings aforesaid of the said defendant, on the said nineteenth day of September did bargain and sell the said goods and merchandise to said defendant, upon the terms aforesaid; and the plaintiffs aver that the said ship Crusader sailed from Boston aforesaid on the sixth of November, eighteen hundred and fifty; that thereafterward, on the same day, the plaintiffs requested the defendant to make and deliver to the plaintiffs his note as aforesaid; and yet the said defendant, not regarding his said undertakings, but contriving to injure the plaintiffs, did not pay for said goods by giving his note as aforesaid, or in any other manner, but neglects and refuses so to do.

Also in a plea of the case, for that whereas, on the nineteenth of September, eighteen hundred and fifty, the said defendant was indebted to the plaintiffs in the sum of twelve thousand nine hundred and sixty-eight dollars for three hundred bales of S. F. drills, and in the sum of five thousand five hundred and ninety-seven dollars and three cents for one hundred cases of blue drills, by the said plaintiffs before that time bargained and sold to the said defendant at his special instance and request, and under and by virtue of that bargain and sale delivered to Robert M. Mason and Amos A. Lawrence, partners under the name of Mason & Lawrence, at the special instance and request of the said defendant; and being so indebted, the defendant at the same time undertook and agreed to pay therefor by making and delivering to the said plaintiffs the promissory note of said defendant for the several sums aforesaid, amounting to eighteen thousand five hundred and sixty-five dollars and three cents, payable to the treasurer of the plaintiffs in twelve months from the day when a certain ship called the Crusader should sail from Boston aforesaid, the said defendant stipulating that said ship should sail not after December first then next ensuing; and the plaintiffs aver that the said ship sailed from Boston aforesaid, on the sixth of November, eighteen hundred and fifty; that thereafterward, on the same day, the plaintiffs requested the defendant to make and deliver to the plaintiffs his note as aforesaid, and yet the said defendant, not regarding his said undertakings, but contriving to injure the plaintiffs, did not pay for said goods by giving his note, as aforesaid, or in any other manner, but neglects and refuses so to do.

Also in a plea of the case, for that whereas, on the nineteenth day of September, eighteen hundred and fifty, in consideration that the plaintiffs would bargain and sell unto the defendant, and after such bargain and sale would keep on storage for the defendant, for a reasonable time, without charge of storage, certain other three hundred bales of S. F. drills at a certain price then and there agreed upon between the said plaintiffs and the said defendant, to wit, at the rate or price of seven and one-fourth cents per yard, amounting to the sum of twelve thousand nine hundred and sixty-eight dollars; and certain other one hundred cases blue drills at eight and three-fourths cents per yard,

amounting to the sum of five thousand five hundred and ninety-seven dollars and three cents, amounting in the whole to the sum of eighteen thousand five hundred and sixty-five dollars and three cents; he, the said defendant, undertook and faithfully promised the plaintiffs to pay them for said goods by making and delivering to the plaintiffs the promissory note of said defendant, payable to the treasurer of the plaintiffs in twelve months from the time a certain ship called the Crusader should sail from Boston, the said defendant stipulating that the said ship should sail not after the first of December then next; the plaintiffs, confiding in the said promise and undertakings of the defendant, on the said nineteenth of September did bargain and sell the said goods and merchandise to said defendant on the terms aforesaid, and thereafterward, at the request of the defendant, to wit, upon the thirty-first day of October, eighteen hundred and fifty, delivered the said goods at the depot, in Boston aforesaid, of the Boston and Maine railroad company, of which delivery the defendant then and there had notice; and the plaintiffs aver, that the said ship Crusader sailed from Boston aforesaid on the sixth of November, eighteen hundred and fifty; that thereafterward, on the same day, the plaintiffs requested the defendant to make and deliver to the plaintiffs his note aforesaid, and yet the said defendant, not regarding his said undertakings, but wrongfully intending to injure the plaintiffs in that behalf, did not, nor would, when he was so requested, or at any time before or afterwards, pay the said plaintiffs the price of said goods, or any part thereof by making his said note, or otherwise howsoever, but both neglected and refused, and does neglect and refuse, by reason whereof the plaintiffs have been deprived of the use of said note.

Also in a plea of the case, for that whereas the said defendant, on the thirtieth day of September, eighteen hundred and fifty, at Boston aforesaid, was indebted to the said plaintiffs in the further sum of eighteen thousand five hundred and sixty-five dollars and three cents, to wit, in the sum of twelve thousand nine hundred and sixty-eight dollars for three hundred bales brown drills, marked D, numbered from eighty-one hundred eighty to eighty-four hundred seventy-nine, inclusive, containing one hundred and seventy-eight thousand eight hundred and sixty-nine yards; and in the sum of five thousand five hundred and ninety-seven dollars and three cents for one hundred cases blue drills, marked [B] D, numbered from nine hundred eighteen to ten hundred and three, inclusive, and from fourteen hundred fifty-one to fourteen hundred sixty-four, inclusive; the said one hundred cases containing sixty-three thousand nine hundred and sixty-six yards, bargained and sold by the plaintiffs, through the agency of Mason and Lawrence, commission merchants, to the defendant, and at his special instance and request, in consideration whereof he, the said defendant, undertook and then and there faithfully promised the said plaintiffs to pay them for the said goods by making and delivering to them the note of said defendant for the said sum of eighteen thousand five hundred

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sixty-five dollars and three cents, payable to the treasurer of the Salmon Falls Manufacturing Company twelve months from said thirtieth of September, whenever the said defendant should thereafter be thereunto requested; and the said plaintiffs then and there, to wit, on the day and year last aforesaid, at Boston aforesaid, requested the said defendant to pay the said plaintiffs the price of said goods by giving his said note therefor to the plaintiffs, payable as aforesaid; yet the said defendant, not regarding his said promise and undertaking, but continuing to injure the plaintiffs in that behalf, did not, nor would when he was so requested as aforesaid, or at any other time before or afterwards, pay the said plaintiffs the price of said goods, or any part thereof, by making and delivering his said note as aforesaid, or otherwise howsoever, but hath neglected and refused, and does neglect and refuse; by reason whereof the plaintiffs have been deprived of the benefit and use of the note which defendant ought to have made and delivered as aforesaid.

Also in a plea of the case, for that whereas the said defendant, on the thirtieth day of September, eighteen hundred and fifty, at Boston aforesaid, was indebted to the said plaintiffs in the further sum of eighteen thousand five hundred [and] sixty-five dollars and three cents, to wit, in the sum of twelve thousand nine hundred and sixty-eight dollars for three hundred bales brown drills, marked D, numbered from eighty-one hundred [and] eighty to eighty-four hundred [and] seventy-nine, inclusive, containing one hundred and seventy-eight thousand eight hundred and sixty-nine yards; and in the sum of five thousand five hundred and ninety-seven dollars and three cents for one hundred cases blue drills, marked [B] D, numbered from nine hundred [and] eighteen to ten hundred and three, inclusive, and from fourteen hundred [and] fifty-one to fourteen hundred and sixty-four, inclusive, the said one hundred cases, containing sixty-three thousand nine hundred and sixty-six yards, bargained and sold by the plaintiffs, through the agency of Mason & Lawrence, commission merchants and factors, to the defendant, and at his special instance and request; in consideration whereof he, the said defendant, undertook, and then and there faithfully promised the said plaintiffs to pay them for the said goods, by making and delivering to them the promissory note of said defendant for the said sum of eighteen thousand five hundred [and] sixty-five dollars and three cents, payable to the treasurer of the plaintiffs in twelve months from the time a certain ship called the Crusader should sail from Boston; that said ship should sail not after the first of December, then next; and the said plaintiffs aver that the said ship sailed from Boston on the sixth of November, eighteen hundred and fifty; and the plaintiffs thereafterward, on the same day, requested the defendant to pay for said goods by giving his note as aforesaid. Yet the said defendant, disregarding his said undertaking, did not make and deliver his said note, but refused and does neglect and refuse so to do, by

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reason whereof the plaintiffs have been deprived of the use and benefit of said note.

Also, in a plea of the case, for that whereas the said defendant, on the eleventh of October, eighteen hundred and fifty, at Boston aforesaid, was indebted to the said plaintiffs in the further sum of eighteen thousand five hundred [and] sixty-five dollars and three cents, to wit, in the sum of twelve thousand nine hundred and sixty-eight dollars for

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three hundred bales brown drills, marked D, numbered from eighty-one hundred [and] eighty to eighty-four hundred [and] seventy-nine, inclusive, containing one hundred and seventy-eight thousand eight hundred and sixty-nine yards, and in the sum of five thousand five hundred and ninety-seven dollars and three cents for one hundred cases blue drills, marked [B] D, numbered from nine hundred [and] eighteen to ten hundred and three, inclusive, and from fourteen hundred [and] fifty-one to fourteen hundred [and] sixty-four, inclusive; the said one hundred cases containing sixty-three thousand nine hundred and sixty-six yards, bargained and sold by the plaintiffs, through the agency of Mason & Lawrence, commission merchants and factors, to the defendant, and at his special instance and request; in consideration whereof he, the said defendant, undertook and then and there faithfully promised the said plaintiffs to pay them for the said goods, by making and delivering to them the promissory note of said defendant for the said sum of eighteen thousand five hundred [and] sixty-five dollars and three cents, payable to the treasurer of the plaintiffs in twelve months from the thirtieth of September, eighteen hundred and fifty, whenever the said defendant thereafter, the said eleventh of October, should be thereunto requested. And the said plaintiffs, on the twelfth of October, eighteen hundred and fifty, at Boston aforesaid, requested the defendant to make and deliver his note as aforesaid; yet the said defendant, not regarding his said undertaking, refused to make and deliver his note as aforesaid, and does neglect and refuse, by reason whereof the plaintiffs have been deprived of the use and benefit of said note.

Also, in a plea of the case, for that whereas the said defendant, on the eleventh of October, eighteen hundred and fifty, at Boston aforesaid, was indebted to the said plaintiffs in the further sum of eighteen thousand five hundred [and] sixty-five dollars and three cents, to wit, in the sum of twelve thousand nine hundred and sixty-eight dollars for

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three hundred bales brown drills, marked D, numbered from eighty-one hundred to eighty-four hundred [and] seventy-nine, inclusive, containing one hundred and seventy-eight thousand eight hundred and sixty-nine yards, and in the sum of five thousand five hundred and ninety-seven dollars and three cents for one hundred cases blue drills, marked [B] D, numbered from nine hundred [and] eighteen to ten hundred and three, inclusive, and from fourteen hundred and fifty-one to fourteen hundred [and] sixty-four, inclusive; the said one hundred

cases containing sixty-three thousand nine hundred and sixty-six yards, bargained and sold by the plaintiffs, through the agency of Mason & Lawrence, commission merchants and factors, to the defendant, and at his special instance and request; in consideration whereof he, the said defendant, undertook, and then and there faithfully promised the said plaintiffs to pay them for the said goods, by making and delivering to them the promissory note of said defendant for the said sum of eighteen thousand five hundred [and] sixty-five dollars and three cents, payable to the treasurer of the plaintiffs in twelve months from the time a certain ship called the Crusader should sail from Boston; that said ship should sail not after the first of December then next; and the said plaintiffs aver that the said ship sailed on the sixth of November, eighteen hundred and fifty, and the plaintiffs thereafter, on the same day, requested the defendant to pay for said goods, by giving his note as aforesaid; yet the said defendant, not regarding his said promise, did not make and deliver his said note, but refused and does neglect and refuse so to do, by reason whereof the plaintiffs have been deprived of the use and benefit of said note.

And thereupon the said action was thence continued from said May term until this present term; and now the said Goddard, by his attorney, Francis O. Watts, esq., comes and defends, &c., when, &c., and says he never promised in manner and form as the plaintiffs have declared against him, and thereof puts himself upon the country; and the plaintiffs, by their attorney, Charles B. Goodrich, esquire, do the like. Issue being thus joined, the cause, after a full hearing, is committed to a jury, empannelled and sworn according to law to try the same, who, after hearing the matters and things concerning the same, return their verdict therein upon oath, that is to say, the jury find that the said Goddard did not promise in manner and form as the plaintiffs have declared against him. It is therefore considered by the court, that the said William W. Goddard recover against the said Salmon Falls Manufacturing Company his costs of suit, taxed at dollars.

"A true copy of declaration, amendments, pleadings and judgment, as the same appear of record."

Attest: ISAAC O. BARNES, *Clerk.*

Upon trial of the above cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the plaintiffs filed their bill of exceptions, which was allowed by the court, and is in the words and figures following, to wit:

THE SALMON FALLS MANUFACTURING COMPANY
vs.
WILLIAM W. GODDARD.

Bill of exceptions.

Be it remembered, that at a term of the circuit court of the United States, for the first circuit, holden at Boston, within and for the district

of Massachusetts, on the fifteenth day of October, eighteen hundred and fifty-one, by the honorable Benjamin R. Curtis, associate justice of the Supreme Court of the United States, came the Salmon Falls Manufacturing Company, a corporation established by the laws of the State of New Hampshire, and by an action on the case declared against William W. Goddard, of Boston, in said district, merchant, a citizen of the Commonwealth of Massachusetts, as by the writ, declarations and amendments thereto of record will appear; to which the defendant pleaded the general issue, which was joined, and thereupon came on for trial before the said circuit court, at the said October term, before a jury empanelled for that purpose; and the said plaintiffs then and there to maintain and prove the issue on their part, submitted to the court and jury the documents, admissions, and oral testimony, as follows, to wit:

Admissions, (made by defendant, subject to questions of competency, which defendant denies:)

That the plaintiffs are a corporation duly established by the laws of New Hampshire; that the defendant, on the 19th September, 1850, was owner of a ship called the "Crusader," which was then at sea; that said ship arrived at Boston, on the 15th of October then next, cleared at the custom-house on 2nd of November, and sailed from Boston on a foreign voyage, on the 6th of November, 1850; that the three hundred bales of drills in the plaintiffs' declaration mentioned, were destroyed by fire at the Boston and Maine railroad depot, in Boston, during the night following the day of the 4th of November, 1850.

Notice to defendant to produce papers.

It was in proof, that the plaintiffs on or about the 20th of March, 1851, notified the defendant to produce on trial of the above cause "a bill of parcels or invoice, made by Mason & Lawrence, dated 30th September, 1850, to said defendant, for 300 bales S. F. drills, and 100 cases blue drills;" also, a letter from Mason & Lawrence, to the defendant, dated 31st October, 1850; and also a letter or notice from Mason and Lawrence to the defendant, dated 16th November, 1850;" and hereupon, after stating the writ and declaration, the plaintiffs requested the defendant to produce such papers; neither of which papers was produced by the defendant.

The plaintiffs then introduced the witnesses hereinafter named, who severally testified, as hereinafter stated.

Robert M. Mason.

I am a stockholder in the plaintiff corporation, have been indemnified from loss in this suit by a deposit of money sufficient to cover my proportion of loss and commissions, in the event that the plaintiffs do not maintain their suit. I am a member of the firm of Mason & Lawrence, commission merchants, at Boston, which firm consists of myself and Amos A. Lawrence; we have been the agents of the plaintiffs to sell their goods since 1844 or 1845; on 19th September, 1850, the de-

fendant had a conversation with me in relation to the purchase of some goods; a memorandum was written at the time, part in my handwriting, and partly in that of the defendant; it was signed by the defendant and myself, with our initials. The paper now exhibited to me is the original; it is in these words:

"Sept. 19. W. W. Goddard, 12 mos.
300 bales S. F. drills - - $7\frac{1}{4}$,
100 cases blue " - - $8\frac{3}{4}$.
Cr. to commence when ship sails; not after Dec'r 1st; delivered free of charge for truckage.

R. M. M.
W. W. G.

The blues if color is satisfactory to purchaser."

The above paper commencing with the letters "Cr." was written by Goddard, except my initials; the prior portion of the paper was written by myself; the three hundred bales on 19th September, 1850, were at the storehouse of the plaintiffs, at the village of Salmon Falls. I informed the defendant at the time of the purchase, (all conversation at the time of making the memorandum was objected to; received subject to objection, which was excepted to by defendant,) where the goods were; I stated to defendant that the goods were at Salmon Falls, and that when he required them, he must give us some days notice, that we might get them to Boston. On Tuesday, 22d October, 1850, in the State bank at Boston, I met the defendant; he said he should want his goods soon; I asked him to fix a time when he would like them, so that I might send for them, and get them down to Boston. He fixed the middle of the following week, which would be Wednesday, 30th October; I then returned to our counting room, and directed Mr. Bacon, a clerk, to write to Salmon Falls, with directions to have the goods forwarded, to be here at the middle of the following week, as Goddard had so requested. Bacon did write and send the letter to the agent at Salmon Falls, as directed; after the arrival of the goods at Boston, our porter was sent to notify Goddard of their being here; the porter reported his answer to the clerk, and the clerk to me; on the 31st of October, 1850, I wrote to defendant, finding that he had not taken his goods. The witness produces a copy, which is in these words:

DEAR SIR: By your direction to the writer, the drills have been ordered to Boston from our storehouse, and now ready at the depot of the Boston and Maine railroad, at your risk and subject to storage.

Yours, respectfully,
October 31. MASON & LAWRENCE.

S. F. C.
D.—Nos. 8180 to 8479—300 bales.

W. W. GODDARD, esq., *Union Wharf.*

Mason & Lawrence received no reply to this letter. On second of November I went to counting room of Goddard; did not find him there, but saw his clerk on the wharf, alongside a ship which was loading. I told him that we wanted Goddard to take his goods which were at the depot; the clerk was apparently superintending the shipping of goods. During the forenoon of November 5th, the morning after the fire at the depot, Goddard came to our counting room, a little before two o'clock. Mr. Lawrence asked him if he wanted more goods to take the place of those destroyed in the depot. Goddard said that he did not know that the fire was in the depot where his goods were. He had heard of a fire at depot, but did not know that it was in the building where his goods were. He then asked if his goods were burnt up. Lawrence replied, that the building was destroyed, but could not say how many of his goods were destroyed. Goddard asked, then, how he could identify his goods. Lawrence had before said to him he had better go and see whether his goods were destroyed, and he then asked, as already stated, how he could identify them. I then said to him, by your invoice; and he said, yes, I have it with me. He then left, saying he should go and look after his goods. The practice of Mason & Lawrence is, in all cases, to take notes for goods sold. (The usage of Mason & Lawrence objected to.) Goddard has purchased goods of us before the 19th of September, 1850, and has always given notes; he has bought five or six times, and perhaps more. He gave his notes in all cases. I have a memorandum, which shows he has bought goods before six times, and given his notes.

(Defendant objected to proof of previous dealings between the parties.)

When the goods of plaintiffs are manufactured, we receive an invoice, which contains the marks and numbers of the packages, and number of pieces and yards in each package.

Cross examination.

At the time of my first conversation with Goddard (on the 19th September) I knew the goods had been manufactured; I believe I can say I knew they were. As far as I recollect, we had at that time a large stock on hand. I think we had. We keep an invoice book by which we know all that are manufactured, and marks and numbers. I am often at the works; I cannot say; I was there within a week or fortnight of this conversation. We usually, in making sales, take the oldest bales first. I could only tell by the invoice book. The invoice book will show whether these goods were manufactured at that time or not. I am willing to produce it. At time of conversation, on 19th September, no particular bales or cases were specified. Our bales are very much alike; we have many thousand per year, all alike. We had a large quantity on hand. As to the blues, I think they were partly here. I can't say now, whether in Lowell or Salmon Falls. I

can show particularly by book. I cannot swear as to the blues without the book. Defendant was informed that the 300 bales were at Salmon Falls at the time of purchase. On the 5th of November Goddard was at counting room about five minutes. He stated that he knew there had been a fire in some depot, but did not know it was that. In the previous sales made to Goddard the goods came by the Boston and Maine railroad. Our invoice book is here, and now offered to defendant for inspection. At the conversation at the State bank Goddard did not express surprise that the goods were not in this city. I have no recollection of his saying any thing to the effect that he was surprised, or wanted his goods; that they ought to have been here. I asked him to fix a time, and he fixed that time. He did not say he could not fix a particular day; he suggested no reasons why he could not fix a particular day; he did not request to have them brought at once, but he wanted them the middle of the next week. This conversation at bank was on Tuesday. The order I gave in pursuance of his request was recorded in our books. All the brown drills he bought of us came by that railroad. He made six purchases before the 19th September, 1850; and I think he always bought these goods. We always bring our goods by the Boston and Maine railroad, and not by the Nashua and Concord. The invoices which we receive from the mills are entered in an invoice book when received. I can't say, however, whether they came to that depot, or to the depot formerly used by that railroad.

Justus D. Watson.

I am the head clerk of the plaintiffs at their works at Salmon Falls. I have charge of all their accounts; receive and pay money at the works.

The witness produced three letters, received at the works of the plaintiffs, from Mason & Lawrence, which are in these words:

BOSTON, *September* 30, 1850.

P. LANTON, esq.

We have sold 500 bales drills, to be delivered to order—No. 8180 to 8679. We will thank you to note this, so as to prevent these bales coming forward till especially ordered.

MASON & LAWRENCE.

BOSTON, *Sept.* 30, 1850.

P. LANTON, esq.

DEAR SIR: Of the drills advised you to-day as having been sold we wish you to send immediately 200 bales, Nos. 8480 to 8679.

MASON & LAWRENCE,
By L. B. BACON."

BOSTON, *October* 22, 1850.

Mr. P. LANTON.

DEAR SIR: We will thank you to load on Saturday next, so as to come down on Monday, 300 bales D. drills, No. 8180 to 8479. These goods we have agreed to deliver the middle of next week, and if sent as above, will arrive here on Monday or Tuesday.

S. F. C.

MASON & LAWRENCE,
By L. B. BACON."

180 bales were sent October 26.
120 do. do. do. 29.

300

(This evidence was objected to by defendant, but was allowed by the court only for the purpose of tending to show a separation of particular goods from a common number.)

On receipt of the letters, dated 30th September, both were received at or about the same time; the 200 bales, No. 8480 to 8679, were immediately forwarded to Boston. I then directed Mr. Hartshorn, a clerk of the plaintiffs', to make a schedule of the 300 bales, numbered from 8180 to 8479 inclusive; this schedule was made at the time, and is now produced. It is headed "300 bales D. drillings."

S. F. C.

"These goods are to remain in the storehouse until specially ordered." A similar memorandum was at the same time made on the outside of said schedule. The person who had charge of the goods at the works, who is called the overseer, was notified of this list, and was informed that they were to be kept until specially ordered. On receipt of the letter, dated October 22, 1850, this schedule was put into the hands of Mr. Gregg, whose duty it was to take goods from the storehouse and load them upon the cars.

His custom was to make a pin hole, as a check, upon each side of the number of each bale when he took it from the storehouse, and when he loaded it upon the cars of the freight-house he made a pin hole at the other side of the number of the bale. This schedule is so marked on both sides of each number. 180 of the 300 bales were loaded on the cars at Salmon Falls on Saturday, the 26th of October, and taken that day; the 120 were loaded on the 29th of October; the memorandum at the bottom of the letter, dated October 22d, showing when the goods were forwarded, was made by me at the time. After the receipt of said letter we made every effort to get the goods loaded; we started them at the earliest moment possible. When goods are manufactured at the works, and ready for sale, we make invoices twice a week, Mondays and Thursdays, containing the marks, numbers of bales and pieces, and yards in each bale, and forward them to Mason

& Lawrence; the 300 bales, numbered 8180 to 8479, were manufactured in the month of April, 1850.

Cross examination.

I cannot state the numbers of bales we had in September, 1850, but it was large, more than four times three hundred. Don't know any thing about the blues; we do not color at Salmon Falls; they are colored elsewhere; orders are sometimes given to put up goods to have them colored; I have no personal knowledge of the sending these goods further than I have stated; I did not see Gregg make the pin holes; no part of the paper is in my handwriting; he is now, I believe, in the city of New York; I did not see the goods loaded in the cars; they were all sent to Boston; the railroad comes within a few rods of our storehouse.

Direct examination resumed.

The witness identifies two original letters, which are in these words; (which were objected to, and admitted subject to objection.)

SALMON FALLS, *October* 26, 1850.

MASON & LAWRENCE.

Of the 300 bales [of] drills ordered to be loaded and sent, so as to arrive in Boston on Monday next, we have been unable to get cars for more than 180 bales, which we have loaded, and were taken to Great Falls to-day; the remainder will be forwarded at the earliest opportunity after we can get cars, probably Monday, so as to arrive in Boston on Tuesday.

P. LANTON, *Agent*,
By J. D. WATSON."

SALMON FALLS, *Tuesday evening*,
October 29, 1850.

MASON & LAWRENCE.

We have finally succeeded in procuring cars, and have loaded to-day the remainder of the lot of 300 bales drills, as per your order of 22d inst., say—

180 bales sent 26th.
120 bales loaded to-day. } 8180 to 8479, inclusive.

The 120 bales loaded to-day we suppose will reach you early to-morrow.

No signature.

These two letters were written by me the days they are dated.

Thomas H. Hartshorn.

I am clerk of the plaintiffs' at Salmon Falls; I wrote the schedule

exhibited to me, which is the one produced by Watson; the memorandum on it, "300 bales, 8180 to 8479, to remain in store until specially ordered," which appears on the same, was written by me. I gave the paper to Gregg, the overseer, and told him the goods were sold, and to be retained until they were specially ordered. I had nothing to do with forwarding the goods; the custom about invoicing goods, and notifying Mason & Lawrence, was as has been stated by Watson.

George S. Oliver.

I was, in October, 1850, in the employment of the Boston and Maine railroad, at Salmon Falls, as station agent; I superintended the loading of goods at the depot; the witness identifies a paper exhibited to him, which is in these words: "Sent this day and Saturday last from the Salmon Falls Manufacturing [Company] 323 bales goods; 180 sent Saturday, 143 this day.

Salmon Falls, October 29, 1850.

This paper was made at its date; there are upon it some figures, made by me at the time to ascertain the amount due for freight. On the 26th of October 180 bales were put into my charge, by Salmon Falls Manufacturing Company, to be forwarded to Boston, and 120 bales on 29th October; these last were loaded in the forenoon, and started between 11 and 12 o'clock; the first lot started 26th, and were received in Boston on the 28th; the 120 on the 29th, and reached Boston about noon on the 30th. Gregg came to me before the 26th, and said he had an order for 300 bales to go to Boston, which were sold to be shipped, and he wanted me to get them there as soon as I could; he was an overseer of the Salmon Falls company, having charge of loading and unloading goods. The Railroad company had not all the cars at that place necessary for the transportation of these goods, when first requested; they were transported as soon as our means admitted.

Cross examination.

I have been employed by railroad five or six years; we had not cars enough at that time for the 300 bales; a part of the 180 bales were hauled up over night, which is unusual; this enables me to remember the circumstances; my attention was first called to this subject about a week ago; I made the figures on the memorandum in October; there was not any interruption at that time in the road.

Lora B. Bacon.

Was clerk of Mason & Lawrence in October, 1850; went there in February before. When a sale is made, the terms, quantity, &c., are handed to a clerk; very frequently, when a large lot is sold, I select the numbers, (objected to, but admitted to show identity of goods.)

On 19th September, 1850, Mason handed me the memorandum of which Mr. Mason has testified, and directed me to copy it in their order book; I did enter it; the goods therein mentioned were entered in the books on 30th September by Mr. Rein, also a clerk; he made a bill of the goods on that day of 300 bales and eighty-six cases; and also made an entry of the same in the sale book, under that date. Witness refers to the entry upon the book, which is, "W. W. Goddard; 12 mos.; S. F. C. D.; drills; 300 bales, &c." Under the general bill of parcels was written an invoice, showing the numbers and yards of each bale and case. At the time this entry was made, the 86 cases blue were all on hand in store; the balance of 14 cases were received by us, and entered upon the sale book on 11th October; and the bill of parcels or invoice, which had been commenced on 30th September, was on said 11th finished by the addition of the numbers, yards, &c., of the 14 cases. This bill of parcels and invoice was a regular bill of sale, in our usual form. After it was finished by Rein, I compared it with the books, and saw that it agreed. The witness examines a paper exhibited to him, and says this is a true copy, unless perhaps the heading of the one made by Rein was written; in this it is printed. If the one made by Rein was written, it was like the printed heading used in our bills; when we write the heading we copy from the printed form; the paper made by Rein, and examined by me, was like the one exhibited in marks and numbers, and in all respects, except perhaps the heading might have been written. On the 11th October, 1850, after making the examination as stated, I enclosed the bill made by Rein in an envelope, and directed it to the defendant, W. W. Goddard, and it was put into the rack for the post office. It was put into the place where letters for the post office were usually put; the boy had instructions to take letters found in the rack to the post office; he would have no questions to ask; he went regularly to the post office. On 22d October, 1850, Mr. Mason said to me to order those goods from Salmon Falls to come here the middle of the following week; that Mr. Goddard had requested them by that time. (Objected to, but admitted on declaration of plaintiffs' counsel that they should show it was communicated to Goddard.) On that day I wrote the letter exhibited to me, (which is the same herein before stated;) it was written on the day of its date. Toward the last of the same week, say Friday, 25th October, Goddard called at counting-room of Mason & Lawrence, and asked when those goods would be along. I said the middle of the following week, as he had directed to Mr. Mason. He regretted that he did not order them earlier; he wanted to have them sooner; was very anxious to have them then; he did not deny the order, but regretted that he had not ordered them earlier; he asked me if we had not other goods on hand which we could give him in their stead; I told him that we had entered them in our books, and had reported the sale; and also that we had no goods which we could give him; he then left, saying he was sorry he had not ordered Mr. Mason to order them sooner; he wished to know if I could not write and direct them to be sent earlier; I told him that

I would so write. After he left, I referred to the order which had been sent, and found that, as this was Friday, and the order had requested them to be loaded on Saturday, it would do no good to write, and I did not write.

Mason & Lawrence received from the agent at Salmon Falls the two letters, dated October 26th and 29th, exhibited to me, (which are the same heretofore stated,) by regular mail or express, in usual course of business. Upon receipt of last one, I sent our porter, Walker, to notify the defendant that his goods had arrived; gave him a memorandum of the numbers, 8180 to 8479; told him to say to Goddard that they had arrived and were ready for him; this was on 30th October, the day on which the last of the 300 bales arrived; Walker returned and gave me an answer; he brought back the memorandum of the numbers, and I gave it to Mr. Mason, and communicated the answer which Walker said he had received from Goddard; Mr. Mason then at once wrote a letter to Goddard, under date of October 31st, a correct copy of which is exhibited to me; Mr. Mason handed the letter to me, and I added at the bottom the numbers and marks, which I copied from the paper which had been previously given to Walker, as before stated; Mr. Rein took the letter; I have no knowledge of any reply to the letter. When the invoice was finished, on the 11th October, the blues were in our store at Boston. I have known instances of notes being required for goods sold before their delivery (objected to;) Mason & Lawrence always take notes; their custom is, in making bills, to use printed heads (objected to.) The porter and receiving clerk of Mason & Lawrence is the same person. The witness examines the book of the receiving clerk. This is the book by which the person whose duty it is to deliver goods is governed. In the sickness of the regular clerk I made an entry in this book of the 300 bales sold to Goddard, which entry the witness identifies; I made it on [the] morning of October 30th; the entry is in these words: "300 bales from storehouse, October 29, '50, S F C D, for W. W. Goddard, 8180, 8181, and so on to 8479; the object of this was that the porter might check the same as he delivered the goods; if the goods are to be delivered he is directed accordingly; he was not directed to deliver these from the depot, but the direction to him was to check them as delivered; the general rule is that the porter is to keep the goods until he knows where they are to go; when goods are delivered at the station he goes when the goods are called for and sees that the goods are checked; he checks them there at the station. The memorandum is notice to the porter having charge of the delivery, and he acts from that without inquiry. We should expect Goddard to say to us he was ready to take them, and in that case we should direct the porter to take the book and check each bale as it was delivered.

Cross examination.

None of these were checked; they should be checked whenever they passed from our possession; if goods are called for we should direct their

delivery wherever the understanding was, and when he so delivered he would check.

Eirwick Rein.

I am a clerk of Mason & Lawrence; made an entry in their books on 30th September, 1850, of 300 bales drills, and 86 cases, sold to Goddard; on 11th October made a similar entry of 14 cases; on 30th of September commenced a bill of parcels, and finished on the 11th October; the one now exhibited to me is, I believe, like it, and that the one I made had a printed head. The paper exhibited to the witness is in these words:

Copy.

BOSTON, *September 30th*, 1850.

W. W. Goddard, esq., bought of Mason & Lawrence,

S. F. C.
D. 300 bales br. drills, 8108 to 8479, 178,869 *a* 7¼ - 12,968 00

[B.]
D. 100 cases blue drills, { 918 to 1003 / 1451 to 1464 } 63,966 *a* 8¾ - 5,597 03

$18,565 03

Terms 12 months, notes payable to the treasurer of the Salmon Falls Manufacturing Company.

S. F. C.

D.	8180	601	8230	586	8280	599	8330	588	8380	601	8430	595
	81	591	31	599	81	594	31	609	81	587	31	596
	82	600	32	593	82	596	32	601	82	602	32	603
	83	596	33	593	83	594	33	601	83	596	33	593
	84	603	34	591	84	601	34	597	84	600	34	584
	85	595	35	606	85	592	35	589	85	590	35	600
	86	605	36	593	86	594	36	599	86	590	36	599
	87	586	37	594	87	590	37	600	87	588	37	587
	88	597	38	591	88	592	38	590	88	581	38	600
	89	583	39	590	89	598	39	591	89	604	39	594
	90	591	40	594	90	595	40	589	90	592	40	587
	91	599	41	604	91	581	41	598	91	595	41	602
	92	587	42	594	92	621	42	587	92	600	42	615
	93	611	43	602	93	574	43	607	93	583	43	587
	94	603	44	603	94	594	44	585	94	603	44	597
	95	594	45	591	95	590	45	595	95	607	45	595
	96	611	46	592	96	606	46	583	96	604	46	607
	97	585	47	598	97	607	47	605	97	587	47	593
	98	595	48	582	98	603	48	596	98	593	48	592
	99	582	49	603	99	603	49	594	99	592	49	597

8200	603	50	597	8300	595	50	603
01	600	51	592	01	606	51	594
02	586	52	602	02	605	52	598
03	589	53	599	03	602	53	600
04	583	54	609	04	579	54	608
05	586	55	598	05	593	55	597
06	589	56	597	06	584	56	583
07	607	57	593	07	604	57	600
08	596	58	589	08	594	58	596
09	593	59	598	09	599	59	599
10	591	60	596	10	593	60	582
11	584	61	602	11	609	61	595
12	595	62	594	12	604	62	604
13	606	63	588	13	590	63	597
14	606	64	598	14	589	64	596
15	599	65	602	15	598	65	591
16	593	66	602	16	594	66	601
17	586	67	605	17	597	67	603
18	598	68	609	18	598	68	612
19	609	69	601	19	597	69	596
20	595	70	599	20	613	70	603
21	599	71	600	21	601	71	590
22	588	72	590	22	595	72	590
23	589	73	603	23	593	73	588
24	590	74	597	24	578	74	599
25	591	75	600	25	591	75	599
26	589	76	602	26	587	76	584
27	603	77	589	27	595	77	600
28	590	78	596	28	584	78	596
29	591	79	603	29	589	79	596

[B.] D.	918	641	935	636	952	650	969	643	986	650	1003	593
	19	636	36	638	53	636	70	647	87	639	1451	631
	20	635	37	640	54	631	71	647	88	642	52	634
	21	646	38	651	55	659	72	648	89	640	53	631
	22	639	39	641	56	650	73	662	90	642	54	612
	23	641	40	639	57	633	74	642	91	645	55	634
	24	642	41	642	58	646	75	648	92	648	56	625
	25	658	42	652	59	641	76	653	93	639	57	634
	26	658	43	651	60	627	77	654	94	654	58	637
	27	659	44	633	61	638	78	641	95	633	59	634
	28	644	45	640	62	625	79	642	96	637	60	617
	29	641	46	652	63	639	80	632	97	632	61	632
	30	634	47	651	64	651	81	628	98	635	62	594
	31	620	48	654	65	628	82	637	99	660	63	632
	32	637	49	642	66	646	83	642	1000	633	64	629
	33	650	50	656	67	641	84	639	01	621		
	34	637	51	635	68	653	85	655	02	622		

2016.

I gave the one made by me to Bacon to examine, which he did, and put it into an envelope, directed to the defendant, Goddard, and then it was placed in the rack where letters are deposited for the post office; I saw letter of October 31st, 1850; it was copied in the letter book by James; afterwards I directed it and carried it to the counting room of Goddard; he was not present, and I gave it to his clerk; Mr. Goddard called one afternoon at [the] counting room of Mason & Lawrence to inquire whether he could get some other goods instead of those invoiced to him, and he was answered that the entry had gone through our books, and it could not be altered; Powers, the book-keeper, asked him if he would send up his note. Mr. Goddard asked him whether it is customary to give notes before goods are delivered; I told him that the goods had been stored on his order and were considered as delivered to him; I told him that I had been at his counting room several times for his note, and then he said—well, if you are in a hurry for the note, I will send it up; after the fire, on 14th November, 1850, I saw Mr. Goddard and asked him to send up his note for the goods he had bought; and he answered, if Mr. Mason will send down my goods I will send up his note; I copied a letter about blue drills in the letter book and carried the letter to Mr. Goddard's counting room; the witness identifies the copy, which is in these words:

"BOSTON, *November* 16, 1850.

DEAR SIR: The 100 cases blue drills, which we, as agents of the Salmon Falls Manufac'g Company, sold you on 19th September last, are ready at our store, subject, according to the terms of sale, to your order and at your risk; we await your direction in relation to them.

Resp'y, your ob't s'ts,

MASON & LAWRENCE."

W. W. GODDARD, esq.

Mr. Goddard was not in, I think; I know of no reply to the letter of 31st October; I know of no reply to the one in relation to the blue drills; I commenced in the employment of Mason & Lawrence, January, 1850; it was their custom to take notes while I was there.

Cross examination.

I am Norwegian; I learned the English language in school; I spoke it before I came here; the request for the note was at the same interview when Goddard asked to have other goods substituted; I understood that he was then wanting the goods before they had arrived; I presumed that they were on the way; the goods were stored on his order; I presumed the goods were to be shipped; if they were they must have been stored on his order until that time; the goods were then expected in the middle of the week; I do not know when they were expected, but one or two days I presume, but I don't know the time.

James Kelley.

Was in the employment of Mason & Lawrence a year ago; was accustomed to go to the post office; in counting room of Mason & Lawrence, at the end of the desk, there was a rack for letters to be put into the post office; it was my custom to take letters from that place and carry them to the post office, at the usual hours when the mail went out; I always carried the letters to the post office which I found in that place.

Cross examination.

I am seventeen years old; have been with Mason & Lawrence one year and seven months; there now; I help the porter, and did in 1850.

Samuel H. Walker.

In September and October, 1850, I acted as porter for Mason & Lawrence; I left on the last day of October. Mr. Bacon gave me an order to communicate to Mr. Goddard; he gave me a memorandum, on the 30th October, of some goods containing marks and numbers, to go to the Boston & Maine railroad depot in Boston, and see if such bales had arrived, and if they had, to notify Goddard; I did so; I went to depot and found some part of the goods there; I looked over the bales; I saw a great many of those numbers, and concluded that all were there; the first invoice were unloaded and the rest were in the cars; I saw many of the numbers; I went from the depot to Union wharf; met Mr. Goddard; I called him by name, and told him that Mr. Bacon had sent me to notify him that 300 bales were ready at the railroad for delivery to him; he hesitated, and then answered, "don't send them;" he said nothing more; I reported his answer to Mr. Bacon; this was on October 30th, 1850; I heard Powers ask Goddard for his note; cannot state the exact time; it was about 1st October; Powers stepped to the door, asked Goddard if he would give him his note; Goddard replied, yes, if you are in a hurry for it; this book, the delivery book, was in my care and accessible to me; it was in my custody; the numbers of Goddard's bales on this book were from 8,180 to 8,479 inclusive, written out singly; I did not show the memorandum which Bacon gave me to Goddard.

Cross examination.

I did not count the bales at the station; I saw the numbers; I saw between 200 and 300; I looked at those which were in the cars; cannot state the number; there were two car loads there.

Amos A. Lawrence.

Am a member of the firm of Mason & Lawrence; am a stockholder of the Salmon Falls Manufacturing Company; have no interest by

reason of an indemnity; was not at the counting-room when sale was made to Goddard; when I returned, saw the memorandum of 19th September; on the 5th of November, 1850, Goddard called at counting-room of Mason & Lawrence, and I had conversation with him; I asked him if he had come to buy more goods to take place of those burned. He said that he had not; he did not know that they were burnt; he knew that a railroad depot had been burned, but did not know that it was the one at which those goods came; Mr. Mason said, why, Mr. Goddard, we gave you notice, and to take them away, and that they were at your risk; Mr. Goddard said, yes, I know it; he asked me if I knew whether his good were burnt; I told him I was not certain of that, but I presumed a great part of them must be. I said that I had been down there and had seen no goods of ours; that we had a great many there, which I knew must be burnt; I advised him to go and look after his; he said that he would; but he asked how shall I know which are mine; Mr. Mason replied, you can tell by your invoice, and Goddard said, "yes, I have it with me, or I have it in my pocket;" Mr. Goddard seemed to be disturbed, and after walking up and down the room two or three times, went away; we had, before 19th September, received notes of Goddard for goods sold; Mr. Mason finds six entries; I know that Mason & Lawrence have had his notes for goods sold; we never make sales to any party except for notes.

Cross examination.

We had many goods burnt at the depôt, which had been there from several weeks to one day.

Henry B. Mather.

I am general cashier and clerk in doors of Mason & Lawrence; I heard conversation, on 5th November 1850, between Goddard and Mason & Lawrence, about ten minutes before two o'clock, p. m. Mr. Lawrence asked him, if he wanted to buy any more goods in place of those lost; Goddard replied, that he did not know that he had lost any; Lawrence asked if he had heard of the fire; Goddard said, he had heard of a large fire, but did not hear that it was the depôt where these goods of the Salmon Falls were brought; Lawrence told him it was so, that it was the Boston and Maine depôt that was burned; Goddard then asked, if the goods were all burned which were in the building; Lawrence said he could not tell, but the building was all burnt, and said that he, Goddard, had better go or send and look into the matter; Goddard asked how he could tell his from others; Mr. Mason who had come in replied, that he could tell by his invoice; and Goddard said yes, he had it, and could easily tell or ascertain his goods; Mr. Mason said to Goddard something to this effect, he ought to have taken his goods sooner; that he had notice enough; and Goddard replied, that he knew it; that

he had notice enough; this is about all; Goddard left them to go, I suppose, to look after the goods.

Cross examination.

Cannot fix the time when he came in; Mason not there when Goddard first came in, when conversation began; the stage of the conversation at which he came in, I cannot fix; was not in the counting room when the conversation commenced; I do not recollect who [was] present when he came in, but I recollect his being there and making that reply; I think Goddard was there not more than ten minutes; he appeared to be somewhat disturbed, when he heard that the fire was at the Maine depôt, Goddard walked about the room three or four times; Mr. Lawrence was in the room when Mason remarked about the notice; I remained there until Goddard left; I do not know where the store of Goddard is; I do not know that Goddard was owner of "the Crusader" I had nothing to do with this contract.

Patrick H. Powers.

I am book-keeper of Mason & Lawrence; have been since January 1st, 1850; was there as boy and entry clerk, eight years; on Friday, 25th October, 1850; Goddard was at counting-room of Mason & Lawrence, and seemed to be in a great hurry; he said he wanted his goods down before the middle of the week; he asked if they could be got down sooner; I told him they might probably be got down if they had cars there ready to load them, but that I could tell him nothing certain, as it was out of my department. He then asked if other goods could not be substituted in their place. Bacon replied; I do not recollect his reply. I told him that they could not, because they had been carried through all the books, posted, and sale rendered. As he was going out I asked him for his note. He asked if it was customary to give notes before the goods were delivered. Rein told him that the goods were stored at his request, and subject to his order at any time, and that under these circumstances we were entitled to the note; then Goddard said, if you, or Mason & Lawrence, I do not remember which expression, are in a hurry for the note, I will send it up. At one end of our store is a large room for selling goods; at the other two counting-rooms, with windows and a door between them; the door is ordinarily open, the windows closed; the length of the two counting-rooms is about forty feet, and conversation in one counting-room may be readily heard in the other.

Cross examination.

I think conversation with Goddard on 25th October was in the afternoon, and from fact of its being after the mail hour, it must have been after half-past one; I had no knowledge that the goods were intended

to be shipped, except from the memorandum of 19th September; there was considerable conversation about sending a letter, and that it could not go until morning; I cannot say who said this; it might have been said by some one other than Bacon; I will swear that there was something said about letter not going until next morning.

Charles Rosevelt.

I am porter and shipping clerk of Mason & Lawrence; have been since September, 1848; was absent August, September, and October, 1850; returned 1st November; the witness identifies delivery book; have been accustomed to write in it; it has, under date of October 29th, 1850, a memorandum of 300 bales sold to Goddard, in which the numbers are written out from 8,180 to 8,479; on the morning of November 4th, 1850, I went to the Boston and Maine railroad depot to ship some goods to Mr. Appleton, and after shipping them, by shipping, I mean saw them put upon the trucks, I ascertained the locality of the bales mentioned on the delivery book, of which I have spoken, as sold to Goddard, so that I should know where his bales were, when he should send for them. I found the 300 bales sold to Goddard, and counted them; they were numbered from 8,180 to 8,479; I counted the 300 bales, and then I looked over them all, and found no number higher or lower than these numbers, and I concluded therefore that these were the three hundred, and that no others were mingled with them. Mr. Blake is the freight agent of the Boston and Maine railroad, at the Boston depot. He complained to me that there was a large quantity of goods there, larger than there ought to be; that they ought to be removed; I told him, (defendant objected to conversation by witness with Blake, admitted subject to exception,) that I had come there to send 300 bales to Mr. Appleton, and that 300 bales, which I pointed out to him belonged to Mr. Goddard, and that it was no fault of Mason & Lawrence; that Goddard had been notified and requested to take them away, and had given no orders about taking them away, or when he would receive them. I had the delivery book with me at the time.

Cross examination.

I never saw Mr. Goddard upon the subject; did not report to him this conversation; I told Mr. Mason this conversation on my return to the store; to the best of my recollection this was between two and three o'clock; the conversation with Blake, I think, was between ten and eleven o'clock, and after I had sent the goods to Mr. Appleton; the 300 bales of Goddard were on the first floor, where the train comes in, on a platform, a little higher than the track in the depot building; I sent the goods of Appleton to his store at Lewis' wharf; they were brown goods; they were in the cars when I got up there. I sent them by one of our truckmen; they had come in that morning; cannot say

how long they had been bought; Mr. Bacon gave me the order; Mason & Lawrence paid the truckage; I know where Goddard's store has been ever since 1848; I understood that Goddard had a vessel up, and that he was an exporter; and I understood and supposed these goods to be for shipping. And thereupon the plaintiffs rested their case. The defendant, to support and prove the issue on his part, offered in evidence to the court and jury the deposition and oral testimony, as follows:

Deposition of Shirley Erving.

I, Shirley Erving, of Boston, of lawful age to testify on oath, depose and say, in answer to interrogatories by F. O. Watts, counsel for defendant:

1. State your age, occupation, and place of residence.

Answer. I am twenty-seven years of age; a merchant's book-keeper; I reside in Boston.

2. Whether or not you are expecting to go away from Boston, and when, and how long you expect to be absent.

Answer. I expect to go away next week, to be absent two years or more; I am going to South America.

3. State whether you are acquainted with William W. Goddard, the defendant in this case; if yea, how long you have known him, and whether you have ever been in his employment, and when, and for how long a time.

Answer. I know Mr. Goddard, and have known him since 1837; I have been in his employment from 10th April, 1847, until the first of March, 1851.

4th. State whether you ever had an interview with either of the firm of Mason & Lawrence, of Boston, respecting any goods; if yea, state when it was, and where, and all that was said in that interview.

Answer. I did have an interview with Mason, of the firm of Mason & Lawrence, respecting goods, November 2, 1850, about half past ten o'clock, at Mr. Goddard's store, and on Union wharf, in Boston, at half past ten o'clock. Mr. Mason called at Mr. Goddard's store, and wanted to know if he was in; my reply was he was not. He wanted to know when he would be in; I told him about twelve; soon after I went out on to the wharf, where I saw Mr. Mason again. He came to me and wanted to know why Mr. Goddard did not take his goods; I told him there was no room in the ship, and she was full. He told me to tell Mr. Goddard that the goods were at his risk, and that he should send them down; I told him we had not an inch of room. He said, well, I shall send them; that is all the interview I have had with Mr. Mason, and I have had none with Mr. Lawrence.

5. State whether or not you informed Mr. Goddard that Mr. Mason said he would send the goods; if so, when.

Answer. I informed Mr. Goddard during the same day, the second November, in the forenoon, before two o'clock.

6. In what was said by you in that interview, had you any authority from said Goddard to say any thing in his behalf?

Answer. I had not.

7. Whether or not, you had subsequently any interview with said Mason & Lawrence's clerk; and if yea, state when and where, and all that took place.

Answer. I had subsequently an interview with Mason & Lawrence's clerk. (Mr. Loring objects to any statements by any person as Mason & Lawrence's clerk, unless the witness knows such person, and knows him to have been Mason & Lawrence's clerk.) On the thirteenth of November, 1850, in the afternoon, at Mr. Goddard's store; I do not know who the person was, only I supposed he was a clerk; he called at the store of Mr. Goddard, and said that Mason & Lawrence wanted Mr. Goddard to send them his notes. I told him, he, Mr. Goddard, was not in; that he would be in the next day about twelve o'clock; that was all the interview I had with the clerk.

8. State whether or not there was subsequently an interview between Mr. Goddard and the same person at which you were present. If yea, state all that took place.

Answer. The next day, 14th November, 1850, there was an interview between the same clerk of Mason & Lawrence and Mr. Goddard at his store, at about twelve o'clock, I supposed, or later, at which I was present; this same clerk called and said that Mason & Lawrence wanted their notes. Mr. Goddard asked him for what; he said for their goods. Mr. Goddard asked him if they supposed the goods belonged to him; and the clerk said, they did, as they had sent him for the notes, and the goods were charged to him, (Mr. Goddard;) the clerk waited but a few seconds, when Mr. Goddard said, when Mason & Lawrence send the goods I will send or give my note; that was all.

Cross interrogatories by Charles G. Loring for plaintiffs.

1. Whether or not William Goddard, by marriage or otherwise, is related to you?

Answer. He is by marriage; he married my sister.

2. Did you make any memorandum of the conversations stated in the answer to the 4th interrogatory; did you at the time have any further conversations with him besides that you stated; were any other persons present; and if so, whom?

Answer. I did make a memorandum; I had no further conversation with Mr. Mason at that time that I remember; there was no one whom I knew in particular present; no one whom I could name; there were workmen all round.

3. Where is that memorandum; when was it made, and at any body's and whose request, and where has it been kept, and by whom? Be pleased to annex it.

Answer. I don't know where the memorandum is; I don't know the precise day or time it was made; it was made a few days, five or

six days after the interview with Mr. Mason; it was made at the counting-room, and I suppose at Mr. Goddard's suggestion; I don't know where it has been kept, nor by whom; I have not it.

4. When did you last see it, and where, and what was the occasion of your having it; and what was then done with it?

Answer. I can't state when I last saw it; the last time I saw it I handed it to Mr. Goddard, it might have been one or two or three months after the interview with Mr. Mason; I had it my possession up to the time I handed it to Mr. Goddard; what Mr. Goddard did with it I don't know.

5. Why did you hand it to Mr. Goddard; was it at his request; and if so, what reason did he assign for taking it?

Answer. I presume it was at his request that I handed it to Mr. Goddard; I dont recollect that he assigned any reasons for taking it.

6. Was more than one memorandum written or made before it was considered to be correct?

Answer. But one; I made but one; I handed it to Mr. Goddard.

7. Do you intend to swear that you have stated the precise words used by yourself and Mr. Mason, or only your recollection of the substantial meaning of those believed to have been used, as resting in your memory?

Answer. To the best of my knowledge and belief to the words used.

8. Do you swear positively that those were the words used by each party, and that neither used more or other words?

Answer. I can't swear to that; there might have been some little word of Mr. Mason; I can swear to my own; he might have added a word of no importance to the occasion.

9. Have you seen the memorandum within one, or two, or three days, weeks, or months?

Answer. I could not swear to that.

10. Did you make any memorandum of the interview stated in your answer to the eighth interrogatory; if so, when; at anybody's and whose suggestion; where has it been kept, and where is it.

Answer. I think I did make a memorandum of that interview; probably at the time of the interview, or soon after; I don't recollect if at any one's suggestion; I don't know where it has been kept, or where it is.

11. Was more than one memorandum written or made, before it was considered correct, of this last interview?

Answer. No, sir; and there was no correction in it.

12. Do you intend to swear that you have stated the precise words used by Mr. Goddard and the supposed clerk, or only your recollection of the substantial meaning of those believed to have been used, as resting in your memory?

Answer. I should not want to swear that they were the precise words, but the meaning as it rests in my memory.

13. Have you conversed with Mr. Goddard on the subject of these

interviews since they took place; if yea, how often, when, and on what occasion?

Answer. I have not conversed with Mr. Goddard as to them.

14. Have you just heard the counsel for plaintiffs ask Mr. Goddard's counsel for these memoranda; and if so, have they been produced? And if yea, be pleased to annex them.

Answer. I heard Mr. Loring request the memoranda; I saw Mr. Watts hand them to Mr. Loring; they are shown to me, and are my memoranda, and they are annexed to this answer, and marked *a* E. G. L. by the commissioner.

15. Whether or not, at any time, you have seen in the possession of Goddard a writing or memorandum, dated 19th September, 1850, signed by Goddard and Robert M. Mason, by their initials, which purported [to be] a sale, by Mason & Lawrence, of 300 bales S. F. drills and 100 cases blue drills.

Answer. I cannot say that I have.

16. At or about what time you first saw such memorandum.

Answer. I don't know that I have seen it.

17. Whether or not you have seen in the possession of Goddard a bill of parcels, or bill of sale, made out in the name of Mason & Lawrence, as vendors, to Goddard, dated on or about the 30th of September, 1850, of 300 bales and 100 cases drills.

Answer. I think I have seen the bill at Mr. Goddard's counting room, and with his papers kept there.

18. Whether or not such bill of parcels contained at the bottom the numbers, yards, and marks of such bales and cases.

Answer. I think it did.

19. When and how was said bill of parcels delivered to, or received by, said Goddard?

Answer. I don't know.

20. Whether or not the heading of said bill was printed or written.

Answer. I could not say.

21. Whether or not said bill of parcels states that a note was required to be given; and if so, to whom was it to be made payable?

Answer. I can't say; I do not know.

22. Whether or not you have at any time seen in the possession of Goddard, or among his papers, a bill of parcels similar to the one now exhibited to you, marked G; if so, when was it received by him?

Answer. I think I have seen such a bill at his counting room, among his papers. I don't know when it was received by him.

23. Whether or not Walker, porter of Mason & Lawrence, notified Goddard or yourself that the goods sold to Goddard had arrived from the works of the Salmon Falls Manufacturing Company.

Answer. I have no recollection of it.

24. Whether or not Goddard received a letter from Mason & Lawrence, dated 31st October, 1850, notifying him that the goods sold to him had arrived, and were at his risk; have you seen such letter in the possession of Goddard?

Answer. I am not positive whether Mr. Goddard received such letter, or whether I ever saw it in his possession.

25. Whether or not, at the bottom of said letter, there was a minute or memorandum of the marks and numbers of the goods, or other designation of them.

Answer. If there was such a letter I can't recollect the contents of it.

26. Whether or not Robert M. Mason, on or about November 2, 1850, called at the counting room of Goddard, and notified you that the goods had arrived; and what else, if any thing, did Mason say relative to the goods?

Answer. Mr. Mason called at the counting room of Mr. Goddard, and about the time stated, as I have previously stated; but I don't recollect he notified me to the effect inquired of, and I think he did not; he said no more than what I have already said in my previous answers.

27. Whether or not, on the same day, you inquired at the counting room of Mason & Lawrence, if they had sent any goods to Goddard, or to his ship. What else did you say in relation to said goods, and to whom?

Answer. I did, on the same day, inquire at the counting room of Mason & Lawrence if they had sent any goods to Goddard's ship; I told them not to send them till ordered to; I said this to two of the clerks; I think one of them is Mr. Bacon; I saw him there, and I supposed he was a clerk; I said no more.

28. Whether or not you made such inquiry in behalf of Goddard, and as his clerk or agent.

Answer. As his clerk.

29. Whether or not Goddard, in September, 1850, was owner of the ship called the Crusader, and where was said ship on the 19th September.

Answer. Mr. Goddard did own the Crusader, to the best of my knowledge, in September.

30. How long after 19th September, 1850, did said ship sail on a voyage to some foreign port?

Answer. November 6th, 1850, she sailed from Boston for a foreign port.

31. Whether or not, at the time you inquired at the counting room of Mason & Lawrence if they had sent any goods to the ship, you said that Mr. Goddard did not wish the goods sent that day. If you so said, by whose direction was it?

Answer. I did not say so.

32. Whether or not, during the month of October, 1850, Mason & Lawrence, or either of them, or any one in their behalf, called at the counting room of Goddard, and there requested his note for goods purchased by him of Mason & Lawrence; if so, who called; what was said in relation to the note?

Answer. I don't recollect any one's calling in the month of October.

33. Whether or not you communicated to Goddard during the

month of October, the fact that Mason & Lawrence had called or sent for the note of Goddard?

Answer. I did not to my recollection.

34. Whether or not you heard of the fire at the Boston and Maine depot in November, 1850, soon after it occurred; when did it occur; was the fact of the fire known to Goddard the morning after it took place?

Answer. I did hear of that fire soon after it occurred; I think it occured the 4th November, 1850. Whether the fact of the fire was known to Goddard the morning after it took place, I do not know.

35. Whether or not Goddard went to the depot aforesaid on the morning after the fire, to inquire whether any goods owned by him had been burned?

Answer. I do not know that he did.

36. Whether or not by direction of Goddard, you went to the counting room of Mason and Lawrence, on 20th November, 1850, and said that Goddard had not bought any goods of them?

Answer. I did not.

37. Whether or not to your knowledge Goddard knew that Mason & Lawrence in September, 1850, and for several years prior to said month, were and had been the factors and selling agents of the Salmon Falls Manufacturing Company?

Answer. I do not know; I have no knowledge about it.

38. Whether or not before the fire, of which mention has been made, any one in behalf of Mason & Lawrence called at the counting room of Goddard to obtain his note for the goods, in relation to which you have been interrogated.

Answer. Not to my knowledge before the fire.

39. Whether or not after the fire you inquired at the Boston and Maine depot, by direction of Goddard, as to the cause of the fire, and what goods had been destroyed?

Answer. I did not.

40. Whether Goddard to your knowledge made such inquiry in person?

Answer. He did not.

41. Whether or not Goddard, to your knowledge, at any time prior to September, 1850, purchased goods of Mason & Lawrence; if he did so purchase, did he give his note for the price, and to whom was the note made payable?

Answer. I do not know of such purchase.

42. Whether or not to your knowledge it was known to Goddard in September, 1850, that the drills, in relation to which you have been interrogated, were owned by the Salmon Falls Manufacturing Company; and that the said goods were on the 19th September at their works in New Hampshire?

Answer. Not to my knowledge.

43. Whether or not at any time after the fire, of which you have spoken, you went to the counting room of Mason & Lawrence, and then said to Amos A. Lawrence, "Mr. Goddard says he has bought no

goods of you," and whether you made any other or similar communication? If so, state the time and the language used by you, and at whose request you so said.

Answer. I did not go there after the fire, nor make any such statement to Mr. Lawrence.

Additional interrogatories by F. O. Watts, esquire, counsel as aforesaid.

1. If Mr. Mason had called at Mr. Goddard's counting room, and there made a notification as you have been inquired of in the 26th cross interrogatory, should you or not recollect?

Answer. I think I should.

2. State the circumstances under which you made the inquiry at the counting room of Mason & Lawrence as inquired of in the 27th cross interrogatory, the object for which you went, the terms in which you put your inquiry, as accurately as you are able.

Answer. (Mr. Loring objects to the witness testifying as to his objects.) On Friday evening, November 1, 1850, on looking over the mate's cargo book I found that he had written in pencil one hundred cases of dry goods, and in another place in said book he had the marks and numbers of one hundred cases of goods. I asked him if the first one hundred cases written (Mr. Loring and Mr. Goodrich object to the statement of conversations with third persons) were the same that he had taken the numbers and marks of. He could not tell; therefore I told Mr. Goddard that there were one hundred cases of cases that I could not find out whether they were on board ship or not. I think he asked me whether this hundred cases had not come from Mason & Lawrence; (in reference to the cases in pencil mark, the numbers of which were not taken,) I told him I did not know, that I would make the inquiry, and on the morning of November 2d, about 9 o'clock, I called at Mason & Lawrence's counting room, and asked the clerks if they had sent any cases of goods to the ship Crusader, or his, Goddard's, ship Crusader; they said they had not, but at the railroad there were cases, or goods, (I am not positive which,) and that they were in the way, and at the railroad they were complaining about them, and wished them taken away; (I then told them not to send any goods till ordered to, that is all.)

3. State whether or not, before you went to Mason & Lawrence on the morning of the second of November, any thing, and if any thing what, took place, which was the occasion of your going there at that time.

Answer. There was a misunderstanding between me and the mate of the Crusader as to 100 cases of goods, and I went up to Mason & Lawrence to ascertain whether they had sent any goods or cases of goods.

4. By the word "they," in the language "they said they had not," in the second and third lines of the memorandum marked *a*, E. G. L., what person or persons are referred to?

Answer. I refer to the clerks.

2122.

5. Had you any authority from Goddard to tell Mason & Lawrence, or any one in their employment, not to send any goods to the Crusader?

Answer. I had not.

6. Whether or not you feel confident that at Mason & Lawrence's, on the 2d November, your inquiry related to cases of goods.

Answer. It did, cases only, as I wished to clear up a mistake.

7. Please to examine the book now produced, and state what it is.

Answer. It is—(Mr. Goodrich objects to the introduction of the book, because it is a book kept by a stranger and not by the witness, and the stranger might be produced)—it is the mate's cargo book of the ship Crusader; it is marked *M*, E. G. L. by the commissioner; the mate's name, I believe, is Foster.

8. State whether or not you had said book before you at the time of the misunderstanding between yourself and the mate, about which you have testified.

Answer. I had the book in my hand.

Additional cross interrogatories by Mr. Goodrich.

1. Whether or not, in October or November, 1850, Mr. Goddard had any clerk other than yourself; if so, state his name.

Answer. He had none to my knowledge.

2. Whether or not Mr. Goddard, on or about 20th November, 1850, to your knowledge, sent any person to the counting room of Mason & Lawrence to make any statement in relation to the goods about which inquiry has been made; if so, who was so sent?

Answer. I do not know that he sent any one.

3. Did you ever hear Mr. Goddard say he had sent any one?

Answer. I have no recollection of hearing him say so.

SHIRLEY ERVING.

The bill of parcels exhibited to witness by the plaintiffs, when the twenty-second cross interrogatory was put, and which is therein referred to, is in the words and figures following:

Copy.

BOSTON, *September* 30, 1850.

W. W. Goddard, esq., bought of Mason & Lawrence.

S F C D	300 bales br. drills, 8180 to 8479, 178,869, at $7\frac{1}{4}$ - - - - - - -		$12,968 00
[B] D	100 cases blue drills, 918 to 1003, 1451 to 1464	63,966, at $8\frac{3}{4}$	5,597 03
			$18,565 03

Terms—12 ms. notes, payable to the treasurer of the Salmon Falls Manufacturing Company.

S. F. C. D.												
8180	601	8230	586	8280	599	8330	588	8380	601	8430	595
81	591	31	599	81	594	31	609	81	587	31	596
82	600	32	593	82	596	32	601	82	602	32	603
83	596	33	593	83	594	33	601	83	596	33	593
84	603	34	591	84	601	34	597	84	600	34	584
85	595	35	606	85	592	35	589	85	590	35	600
8186	605	8236	593	8286	594	8336	599	8386	590	8436	599
87	586	37	594	87	590	37	600	87	588	37	587
88	597	38	591	88	592	38	590	88	581	38	600
89	583	39	590	89	598	39	591	89	604	39	594
90	591	40	594	90	595	40	589	90	592	40	587
91	599	41	604	91	581	41	598	91	595	41	602
92	587	42	594	92	621	42	587	92	600	42	615
93	611	43	602	93	574	43	607	93	583	43	587
94	603	44	603	94	594	44	585	94	603	44	597
95	594	45	591	95	590	45	595	95	607	45	595
96	611	46	592	96	606	46	583	96	604	46	607
97	585	47	598	97	607	47	605	97	587	47	593
98	595	48	582	98	603	48	596	98	593	48	592
99	582	49	603	99	603	49	594	99	592	49	597
8200	603	50	592	8300	595	50	603	8400	593	50	604
01	600	51	592	01	606	51	594	01	585	51	605
02	586	52	602	02	605	52	598	02	596	52	591
03	589	53	599	03	602	53	600	03	601	53	601
04	583	54	609	04	579	54	608	04	604	54	572
05	586	55	598	05	593	55	597	05	593	55	604
06	589	56	597	06	584	56	583	06	602	56	610
07	607	57	593	07	604	57	600	07	602	57	612
08	596	58	589	08	594	58	596	08	599	58	603
09	593	59	598	09	599	59	599	09	589	59	604
10	591	60	596	10	593	60	582	10	596	60	603
11	584	61	602	11	609	61	595	11	597	61	588
12	595	62	594	12	604	62	604	12	596	62	606
8213	606	8263	588	8313	590	8363	597	8413	609	8463	586
14	606	64	598	14	589	64	596	14	593	64	594
15	599	65	602	15	598	65	591	15	598	65	600
16	593	66	602	16	594	66	601	16	602	66	593
17	586	67	605	17	597	67	603	17	588	67	598
18	598	68	609	18	598	68	612	18	594	68	598
19	609	69	601	19	597	69	596	19	605	69	603
20	595	70	599	20	613	70	603	20	588	70	604
21	599	71	600	21	601	71	590	21	599	71	603
22	588	72	590	22	595	72	590	22	598	72	600
23	589	73	603	23	593	73	588	23	599	73	604
24	590	74	597	24	578	74	599	24	594	74	597

25 591	75 600	25 591	75 599	25 580	75 602
26 589	76 602	26 587	76 584	26 606	76 602
27 603	77 589	27 595	77 600	27 601	77 608
28 590	78 596	28 584	78 596	28 604	78 591
29 591	79 603	29 589	79 596	29 586	79 596
[B] D. 918 641	935 636	952 650	969 643	986 650	1003 593
19 636	36 638	53 636	70 647	87 639	1451 631
20 635	37 640	54 631	71 647	88 642	52 634
21 646	38 651	55 659	72 648	89 640	53 631
22 639	39 641	56 650	73 662	90 642	54 612
23 641	40 639	57 633	74 642	91 645	55 634
24 642	41 642	58 646	75 648	92 648	56 625
25 658	42 652	59 641	76 653	93 639	57 634
26 658	43 651	60 627	77 654	94 654	58 637
927 659	944 633	961 638	978 641	995 633	1459 634
28 644	45 640	62 625	79 642	96 637	60 617
29 641	46 652	63 639	80 632	97 632	61 632
30 634	47 651	64 651	81 628	98 635	62 594
31 620	48 654	65 628	82 637	99 660	63 632
32 637	49 642	66 646	83 642	1000 633	64 629
33 650	50 656	67 641	84 639	01 621	
34 637	51 635	68 653	85 655	02 622	

The memorandum referred to by Erving in his deposition, which is annexed to answer given to the 14th cross interrogatory, is in these words:

This conversation took place at M. & L's store, mostly with Mr. Bacon.

November 2.—Called on Mason & Lawrence about 9 o'clock, a. m., to see if they had sent any cases of goods to ship Crusader; they said they had not, but the cases were at the railroad and in the way, and at the railroad they were complaining about them, and wished to get them out of the way. I told M. & L. not to send the cases till ordered to. When I reached the store (say about 10 or 10½) Mr. Mason came in—asked if Mr. Goddard was in? I answered him that he was not. Then he wanted to know when he would be; I told him about 12 o'clock. Soon after I had an occasion to go on the wharf, when I met Mr. M. again; he wanted to know why Mr. Goddard did not take his goods; I told him there was no room in the ship, and that she was full. He told me to tell Mr. Goddard that the goods were at his risk, and that he should send them down. I said that we had not an inch of room. He said well, I shall send them down.

Wednesday, November 13, at 4 o'clock and 20 minutes, p. m., Mason & Lawrence's clerk called at the store; said M. & L. would like to have Mr. G. send up his note; he asked me to ask him; my

reply was that he would find Mr. G. at the store to-morrow from 12 to 1 o'clock.

Nov. 14. Mr. Lawrence's clerk called in the morning; wanted to know if Mr. G. was in; I told him he would be from 12 to 1 [o']clock, about 12¾ o'clock, p. m., M. & L's clerk called and saw Mr. G.; he asked Mr. G. for his note for M. & L.; Mr. G. asked him for what; he answered for their bill of goods; Mr. G. asked if M. & L. considered those goods were at his risk; he replied that he supposed they did, as Mr. Mason sent him down to get his note for them, and that they were charged to him on their books; he waited some few minutes for a reply from Mr. G., when he told him to tell Mason & Lawrence, that when they would send him the goods he would give his note for them.

Nov. 14, 1850.

SHIRLEY ERVING.

William Dorey.

I had charge of the loading the ship Crusader in October, 1850; she had some cotton goods; I think she had 500 packages of dry goods; the ship was ready for sea November 2d; did not sail, wind being ahead; that was the only reason; was ready then; I recollect nothing of any cargo being taken on that day; after cargo was taken, we took certain spare spars, water casks, &c.; most of these were taken in on Saturday; do not recollect whether any thing else was taken on that day; she was then full; the hatches were caulked down on the 1st; the work to be done on the second did not require them to be opened; there was enough work on the second not to require us below, enough to occupy us above; my impression is that most of the dry goods were between decks; do not recollect what was below; some wicker chairs were between decks; the chairs were taken last; cannot say how long we were filling between decks; the lower hold was not full before we filled between decks; generally light articles are put on top.

James Miller.

Was master of the Crusader on the voyage upon which she sailed November 6th; ship was ready Thursday, October 31st; between one and two o'clock, November 1st, Goddard came on board and said vessel was ready; she was ready for sea on Saturday, but could have cleared on Friday, but I would not start on a Friday; some of the water casks, spars, &c., came on board Friday; some on Saturday; she did not clear until Saturday; after the cargo was on board on Friday, there was time on Friday, after every thing was in, to take water casks and spars; I objected to go on Friday, and said to Goddard I hope you won't push me; there were 1000 packages of dry goods on board; do not know where they were stored; heavy goods usually go in the hold; greater portion of bale goods go between decks; cannot say when hatches were caulked down; it is a good day's work to take water, spars, &c.; a portion of these were taken on Friday; chairs,

I think, were taken Friday evening, about 150 or 200; it would require about two days to fill the between decks.

Cross examination.

Nothing whatever was put on board on Monday; I commanded the Crusader on her former voyage; she arrived at Boston from a voyage on 15th October; we had to take in cargo while unloading; we commenced taking in cargo, say the fifth day after our arrival; cannot say when unloading was completed; I think two or three days after we commenced loading.

Thomas E. Simons.

I am truckman; worked for Goddard in October, 1850, at ship Crusader, Union Wharf; I trucked no bales or cotton goods for that voyage; I do all the trucking which Goddard has, which is not done free of expense.

James Miller recalled.

The Crusader lay at Union Wharf in October, 1850, opposite the store of Goddard; she formerly lay at the same place; his (Goddard's) ships usually lay there, and had for eight or nine years.

Martin Murphy.

I had nothing to do with ship Crusader; I know when the loading of the Crusader was completed; it was the second of November, I think; Erving, clerk of the defendant, spoke to me first about some goods coming down; Goddard told me some goods were coming down, say dry goods in bales, and wanted I should take care of them; I told him that our store was pretty full of other goods, and he said I should take care of them; and I said let them come, and I will put them in store number nineteen, until we could put them at our store; no goods came down for a month afterward; this conversation was on or before November 2d; Crusader then lay at wharf loaded, or very nearly so. (The plaintiffs objected to this testimony of conversation between witness and defendant; it was admitted as an act of Goddard, subject to exception;) whereupon defendant rested his case.

The plaintiffs recalled in reply Robert M. Mason.

At my conversation with Irving on November second, I did not say to Erving that I should send the goods down, or any thing of similar import.

Cross examination.

I have no recollection of any conversation after he said the ship was full; as far as my memory goes there was none; I left the wharf as soon as he made that remark; the clerk said the ship was full, and she

would not take the goods, and that was all; I have taken an active part in this controversy; I own over fifty shares in the plaintiff corporation; have been agent since eighteen hundred and forty-five, and have a commission for services.

And here the parties rested their proof.

The plaintiffs submitted the following positions, and thereupon prayed the court to instruct the jury as hereinafter stated.

Position No. 1. On the 19th September, 1850, the plaintiffs bargained and sold to the defendant 300 bales and 100 cases drills, to be paid by note at 12 months from the time a certain ship of defendant should sail, not after the first of December then next.

Position No. 2. On the 30th September, 1850, the plaintiffs bargained and sold to the defendant 300 bales and 100 cases drills, to be paid by note at 12 months from 30th September, 1850.

Position No. 3. The plaintiffs have made out in proof a delivery to, and acceptance by, the defendant, of the goods in declaration mentioned, so as thereby to avoid the statute of frauds.

Position No. 4. Delivery of the goods not essential to the plaintiffs' right of recovery; the title or property passed without delivery.

Position No. 5. The goods were delivered at the depot on 30th October, in pursuance of the request of Goddard, of which delivery he had notice.

First instruction asked by the plaintiffs. "If the jury are satisfied that Mason & Lawrence were the general agents and factors of the plaintiffs; that the memorandum or agreement bearing date the 19th September, 1850, was executed by the parties whose initials are thereto affixed, and delivered by defendant to plaintiffs, it constitutes a contract in writing binding upon the defendant, which is not void within the statute of frauds."

Second instruction asked by the plaintiffs. That if the jury are satisfied as aforesaid, as to the agency of Mason & Lawrence, and that the invoice or bill of parcels, bearing date the 30th of September, 1850, representing Mason & Lawrence as vendors, and the defendant as purchaser of the goods therein described, was delivered by them to him, and received and retained by him, and recognised by him, it constituted a memorandum or contract in writing binding upon both parties, and not void within the meaning of the statute of frauds.

Instruction third asked by the plaintiffs. That if the jury are satisfied that Mason & Lawrence were the general agents and factors of the plaintiffs; that the memorandum of September 19, 1850, was executed by the parties whose initials are affixed, and was delivered by defendant to them; and that the invoice or bill of parcels, dated 30th of September, 1850, was delivered by Mason & Lawrence to defendant in furtherance of said contract, as containing a particular specification and enumeration of the bales and cases mentioned in the memorandum or contract of September 19th, and was received and retained by him as a true invoice or bill of parcels, they are to be taken as parts of one

contract, and together constitute a memorandum or contract in writing binding upon both parties, and not void within the statute of frauds.

Fourth instruction asked by the plaintiffs. "That if the contract was for specific goods selected or assented to by the purchaser, at an agreed price, to be retained at Salmon Falls until he should call for them; and they were set apart from other goods of the vendor, so as to be entirely distinguished therefrom and held subject to his order, and he gave an order for their delivery in Boston, and the vendors thereupon placed them in a course of delivery, and caused them to be transferred from their warehouse by the railroad to Boston, and notified the defendant within a reasonable time of their arrival and of their readiness to deliver them, and he requested that they might not be sent; and thereupon the plaintiffs notified him again of their arrival and readiness for delivery, and that they were lying at his risk and order, and at his expense, and he made no reply, this was in law a delivery to, and acceptance by, defendant, within the statute of frauds, or it is competent for the jury to infer such delivery and acceptance.

Fifth instruction asked by plaintiffs. "Assuming the contract to be properly authenticated within the statute of frauds, then if the goods, the subject of the bargain and sale, were specifically described or assented to by the defendant, so as to be distinguishable from all other goods, and were distinguished and set apart by the vendors, and put into a deliverable state, and placed at the disposal of the purchaser, the right of property or title passed, and they were thenceforth at the risk of the purchaser."

Sixth instruction asked by the plaintiffs. Assuming that, under the contract between the parties, the right of property would not pass until delivery at the place of business of defendant, or at such other reasonable place as he might designate, still, if the jurors are of opinion that the goods contracted for were put in course of delivery by his request, and on their arrival in Boston the plaintiffs notified him of that fact, and of their readiness for delivery, and he requested that they should not be sent, and the plaintiffs in writing repeated that notice, and that the goods were at his risk and charge, this was equivalent to a delivery, which entitles the plaintiffs to recover the price.

Seventh instruction asked "That if the jury are satisfied that the goods which were the subject of the bargain and sale were to be retained by the vendors until called for, and upon such call the vendors put them in transitu as requested, and on their arrival in Boston notified the defendant of that fact, and of their readiness for delivery to him, and he requested that they should not be sent; and he was again notified in writing that they were then and so ready for delivery, and were at his risk and expense for storage, and he made no objection or reply; he is estopped to deny that they were at his risk.

Eighth instruction asked. If the jury are satisfied that the two papers exhibited by the plaintiffs, severally dated September 19 and September 30, 1850, relate to the same transactions and things, and manifestly

relate to the same contract and transaction, they are to be construed together, and so taken, constitute a sufficient written note or memorandum of the contract, within the statute of frauds.

Ninth instruction asked. "If the jury are satisfied that the plaintiffs, on the 30th of October, 1850, were ready and offered to truck the goods from the depot and deliver the same at such reasonable place of delivery within the city of Boston as the defendant might designate, and the defendant, upon notice of such readiness, neglected to designate such place of truckage and delivery, this would in law amount to a delivery and acceptance, unless the jury shall believe that the defendant had, previous to the said 30th of October, designated to the plaintiffs the particular ship or other place at which he wished a delivery." After the plaintiffs had stated their legal positions, and the instructions from one to nine, inclusive, which they prayed might be given to the jury, the same were argued, and thereupon the judge expressed his opinions in relation thereto. When and before any charge or instruction was given to the jury, the plaintiffs, in addition to the instructions which they had prayed, also requested the court to instruct the jury as follows:

Tenth instruction asked by plaintiffs. The plaintiffs pray the court to instruct the jury, that upon the evidence in the case it is competent for them to find a delivery and acceptance, taking the case out of the statute of frauds, if they shall be satisfied that there was such delivery and acceptance; and for leave to go to the jury on that question.

But the honorable court did refuse then and there to give the said instructions to the jury, in the terms and manner in which the same were prayed.

In relation to the second instruction prayed, the court held, "that there was no evidence from which it would be competent for the jury to find that the defendant so recognised the bill of parcels, dated the 30th of September, as to make it a memorandum signed by him according to the requisitions of the statute of frauds."

In relation to the third instruction asked, the court held "that there was not evidence from which it would be competent for the jury to find that the two papers are so connected as to make one contract binding on the defendant under the statute of frauds."

In relation to the fourth the court held, "that there is not evidence from which it would be competent for the jury to find that there was such a delivery and acceptance as is required by the statute of frauds, in the absence of a memorandum in writing signed by the party to be charged."

In relation to the fifth the court held: "This instruction is not applicable to the case, because the assumption made by it that the contract was properly authenticated within the statute of frauds, was not warranted by the evidence."

In relation to the sixth, "that the same not applicable to the case as in proof."

In relation to the seventh the court held, "that there is not evidence

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from which it is competent for the jury to find that the defendant is estopped to deny that the goods were at his risk."

In relation to the eighth, the court held the same as it did in relation to the third.

In relation to the ninth and tenth instructions, the court held the same as it did in relation to the fourth instruction.

And the court did further instruct the jury upon the evidence in the case that it would not warrant a finding by them that the property in question had passed to and vested in the defendant, so as to put it at his risk, and enable the plaintiffs to recover the price thereof after the same was consumed by fire.

Whereupon the counsel for the plaintiffs did then and there except to the aforesaid refusals and to the instructions and charge of the honorable court, and thereupon the jury returned a verdict for the said defendant in words following, to wit:

The jury find that the defendant did not promise in manner and form as the plaintiffs in their writ and declaration have alleged.

STEPHEN KENDALL, *Foreman.*

And inasmuch as the matters referred to, and the several instructions of the honorable court so objected to, do not appear by the record of the verdict aforesaid, the counsel on the part of said plaintiffs prayed the honorable court to set their seal to this bill of exceptions, containing the several matters proved and given in evidence, and the charge of his honor the judge thereupon, and the exceptions thereto.

All which being found to be true, in witness thereof I have hereunto set my hand and seal.

B. R. CURTIS, [L. S.]
Assist. Justice Supreme Court, U. S.

The foregoing is a true copy of the judgment and bill of exceptions, and of all the proceedings had in the circuit court of the United States for the first circuit, within and for the district of Massachusetts, in the case of "the Salmon Falls Manufacturing Company against William W. Goddard."

[L. S.] In witness whereof I have hereto set my hand and the seal of said court, this 29th day of November, 1851.

ISAAC O. BARNES, *Clerk.*